

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
)	
v.)	Case No. 2:05-cr-119-MEF
)	
)	
DON EUGENE SIEGELMAN,)	

**MOTION PURSUANT TO FED. R. CRIM. P. 38 TO STAY IMPOSITION OF FINE AND
TO PAY FINE INTO THE REGISTRY OF THE COURT PENDING APPEAL**

COMES NOW the Defendant, Don Eugene Siegelman, by and through the undersigned, Redding Pitt, his attorney of record, and hereby requests pursuant to Rule 38, Federal Rules of Criminal Procedure, that the sentence of fine imposed on June 28, 2007, be stayed, and that the Defendant be ordered to deposit the amount of the fine into the Registry of this Court, pending the resolution of his appeal to the United States Court of Appeals for the Eleventh Circuit, and as grounds states as follows:

1. In pertinent part, Rule 38, Federal Rules of Criminal Procedure states:
 - (C) Fine. If the Defendant appeals, the district court, or the court of appeals under Federal Rule of Appellate Procedure 8, may stay a sentence to pay a fine or a fine and costs. The court may stay the sentence on any terms considered appropriate and may require the Defendant to:
 - (1) deposit all or part of the fine and costs into the district court's registry pending appeal;
 - (2) post a bond to pay the fine and costs; or
 - (3) submit to an examination concerning the Defendant's assets and, if appropriate, order the Defendant to refrain from dissipating assets.

Whether to grant the stay is in the Court's discretion. *See, United States v. Tallant*, 407

F.Supp. 896 (N.D.Ga. 1975), *aff'd*, 547 F.2d 1291 (11th Cir. 1977).

2. As a part of the sentence imposed on the Defendant on June 28, 2007, the Court ordered the Defendant to pay a fine in the amount of \$50,000.00 and a special assessment fee of \$700.00. Both were ordered due and payable immediately. The Defendant paid the special assessment of \$700.00 on July 21, 2007 (doc. 626). The Defendant has perfected his appeal to the United States Court of Appeals for the Eleventh Circuit (doc. 637).

3. Beginning on or about August 22, 2007, counsel for the Defendant and representatives of United States began a series of discussions regarding the payment of the fine. As a final agreement was not reached on the matter by September 5, 2007, the Defendant instituted other lawful proceedings in its efforts to collect the fine (doc. 1, USDC # 2:07-mc-3371-MEF).

4. On or about September 17, 2007, undersigned counsel for Defendant initiated discussions with representatives of the United States in an effort to resolve payment of the fine. The undersigned counsel for the Defendant and the United States Attorney's Office have engaged in good faith negotiations respecting this matter. As a result of these discussions and given the Court's resolution of Defendant Richard M. Scrushy's request to stay the imposition of his monetary penalties, the United States has agreed not to oppose Defendant Don Eugene Siegelman's request to pay his fine into the registry of the Court under the following conditions:

a) the Defendant will pay into the registry of the Court, to be deposited into an interest bearing account belonging to the Court's registry, no later than November 9, 2007, the

sum of \$49,460.00¹ plus interest accrued on the judgment from the date of imposition until the date of payment;

b) in the event that the Defendant's conviction and sentence are affirmed by the United States Court of Appeals for the Eleventh Circuit, the Defendant agrees that the payment of principal and interest into the registry of the Court and all interest earned thereon between the date of payment and the date of the issuance of the mandate of the United States Court of Appeals for the Eleventh Circuit shall be dispersed from the registry in the manner provided by law, as if payment of the fine and interest then due had been made on the date of the payment by the Defendant into the Court's registry;^{2, 3}

c) In the event that the Defendant's conviction and sentence are reversed by the United States Court of Appeals for the Eleventh Circuit, upon issuance of that Court's mandate, the Defendant will be reimbursed all funds paid into Court's registry and all interest earned on the funds while in the Court's registry, less 10% of the interest earned on the funds, which the Court's registry will retain as reimbursement for expenses associated with the administration of

¹ Since June 28, 2007, the Defendant has paid \$40.00 towards his fine through the Bureau of Prisons' inmate financial responsibility program.

² The Defendant also agrees that, in the event that the Defendant's conviction and sentence are affirmed by the United States Court of Appeals for the Eleventh Circuit, the Defendant will make no claim on any interest earned on the funds while on deposit in the Court's registry, and agrees that all funds and interest earned thereon shall be dispersed in the same manner as any other interest earned on any funds deposited into the registry.

³ The Defendant acknowledges that the Court did not impose interest on the fine in its original judgement because same was ordered to be paid immediately. Given the passage of time, however, and the time value of money which the Defendant has gained since the imposition of sentence, he agrees to pay interest on the fine up to the date of payment at the rate established by law.

the registry.

WHEREFORE, premises considered, the Defendant, Don Eugene Siegelman, respectfully requests that pursuant to Federal Rule of Criminal Procedure 38(c), this Court stay the payment of fine, and that the Defendant be ordered to deposit the amount of the fine owing into the Court's registry pending appeal, and that, by depositing these funds in said registry, interest on the Court's judgment will cease to accrue, pending resolution of the Defendant's appeal to the United States Court of Appeals for the Eleventh Circuit.

s/Redding Pitt
Redding Pitt
Attorney for Don Eugene Siegelman
John D. Saxon, PC
2119 Third Avenue, North
Birmingham, AL 35203
Phone: 205-324-0223
Fax: 205-323-1583
Email: rpitt@saxonattorneys.com
Alabama Bar # PIT-006

Vince Kilborn
David McDonald
Attorneys for Don Eugene Siegelman
Kilborn Roebuck & McDonald
Post Office Box 66710
Alabama Bar #KILBV4484
Alabama Bar #MCDOD5329

Hiram Eastland, Jr.
Attorney for Don Eugene Siegelman
Eastland Law Offices, PLLC
107 Grand Boulevard
Greenwood, MS 38930
Mississippi Bar #5294

G. Robert Blakey
Attorney for Don Eugene Siegelman
Notre Dame Law School
Notre Dame, IN 46556
D.C. Bar #424844

Susan G. James
Attorney for Don Eugene Siegelman
The Law Office of Susan G. James and Associates
600 S. McDonough
Montgomery AL 36104

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of October, 2007, a copy of the foregoing electronically filed instrument was served on the parties listed below by first-class mail, postage prepaid, unless said party is a registered CM/ECF participant who has consented to electronic notice and the Notice of Electronic Filing indicates that Notice was electronically mailed to said party:

Louis Franklin, Esq.
United States Attorney's Office
Middle District of Alabama
One Court Square, Suite 201
Montgomery, AL 36104

s/Redding Pitt
Redding Pitt